B. Drugs (Control)

1952. **File No.** 52

Legal Deptt

B **BRANCH**

Subject:— L.A. Bill no XXXIX of 1952

Re Bombay Drugs (Control) Bill 1952

Bom. Act XXIX of 1952

L.22
E

File No. B. Drugs (Control) /52

Gen. 194 e.

LEGAL DEPARTMENT.

In their letter No. F. 6-2/52 MS, dated the 28th January 1952 the Government of India has held that it is essential that proper control should be exercised over the internal distribution of the drugs known as ACTH and CORTISONE in the country in order to prevent their indiscriminate use. The Drugs Controllers has suggested that in order to achieve the object, recourse may be had to the Bombay Essential Commodities and Cattle (Control) Act, 1946. The Surgeon General agrees with him. The decision of the Government of India for the control of these drugs in the manner suggested by them is based on the ground of public health. It has no reference to the necessity for securing the equitable distribution of commodities which are considered essential to the life of the community or in regard to the trade and commerce. It is true that the opinion of the State Government VIS-A-VIS the necessity or expediency of the order is not open to question or subject to objective tests. Unless, therefore, the Government is of opinion that apart from the ground stated by the Government of India there are reasons to believe that in order to ensure an equitable distribution of these drugs, it is necessary to control them in the manner suggested by the Drug Controller, it would not be legal to amend the Bombay Drugs Control Order in the manner suggested by him.

Sd/- .....

O.C. 21/2

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 2861, dated the 21st February 1952.

SSD.
28.7.56. 4c.

LEGAL DEPARTMENT.

In their letter No. F. 6-2/52 MS, dated the 28th January 1952 the Government of India has held that it is essential that proper control should be exercised over the internal distribution of the drugs known as ACTH and CORTISONE in the country in order to prevent their indiscriminate use. The Drugs Controllers has suggested that in order to achieve the object, recourse may be had to the Bombay Essential Commodities and Cattle (Control) Act, 1946. The Surgeon General agrees with him. The decision of the Government of India for the control of these drugs in the manner suggested by them is based on the ground of public health. It has no reference to the necessity for securing the equitable distribution of commodities which are considered essential to the life of the community or in regard to the trade and commerce. It is true that the opinion of the State Government VIS-A-VIS the necessity or expediency of the order is not open to question or subject to objective tests. Unless, therefore, the Government is of opinion that apart from the ground stated by the Government of India there are reasons to believe that in order to ensure an equitable distribution of these drugs, it is necessary to control them in the manner suggested by the Drug Controller, it would not be legal to amend the Bombay Drugs Control Order in the manner suggested by him.

Id/- .....

O.S. 21/2

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 2861, dated the 21st February 1952.

SSD.
28.7.56. 4c.

Legal Department.

The proposal of the L.S.G. & P.H.D. is that there should be an independent Act relating to drugs providing for the following matters :-

(1) Fixing the maximum price of drug. (This is at present being done under the Bombay Drugs Control Order);

(2) Control on the distribution of certain drugs which are highly toxic known as ACTH and CORTISONE in order to prevent their indiscriminate use (This is being done at present by the amendment of the Bombay Drugs Control Order by adding a new clause 11A to the said Order);

(3) The control on the misuse of medicinal preparations as beverages. The list of scuh preparations is given at p. 1 of the linked file.

2. The L.S.G. & P.H.D. thinks that as the Bombay Drugs Control Order is issued under the Bombay Essential Commodities and Cattle (Control) Act, 1946, which is a temporary Act, it is essential that a permanent provision should be made under a new Act.

3. In place of the draft Bill at p.. 99 to 197 ante a revised draft Bill is sent herewith.

4. The revised draft Bill is based on the lines of the Drugs (Control) Act, 1950 (No. XXVI of 1950).

5. The Bill mainly follows the provisions of the Drugs (Control) Act, 1950. The provisions which differ from the provisions of the said Act are explained as under:-

Clause 2(b) - definition of "drug" .- Under the Drugs (Control) Act, 1950, the word "drug" means a drug as defined in the Drugs Act, 1940 and as such does not include a medicine used or prepared in accordance with the Ayurvedic or Unani System of medicine. The Director of Excise and Prohibition has suggested that for the purposes of the proposed Act, the word "drug" should

also.....

also include a medicine used or prepared in accordance with the Ayurvedic or Unani system of medicine. The word" drug " has, therefore, been defined so as to include Ayurvedic or Unani preparations.

Clauses 2(c), 3(2), 4(2) and 6.- The provisions of these clauses are intended for regulating the possession by individuals of drugs which are found to be used in a manner injurious to health. To achieve the object, power is taken for Government -

(i) to notify such drug (clause 3 (2),

(ii) to specify the maximum quantity of such drug which a person in his individual capacity or as the head of a household may possess at any one time (clause 4(2)),

(iii) to prevent a person other than a dealer or producer to have in his possession at any one time a greater quantity of such drug than what is specified (clause 6).

Section 6 of the Drugs (Control) Act, 1950, prohibits a person other than a dealer or producer, from having in his possession at any one time a greater quantity of any drug than the quantity necessary for his reasonable needs. This provision appears to be vague as in every case it would be difficult to prove what are reasonable needs in the case of each individual. It is, therefore, necessary to provide for prescribing a certain maximum so that a person would be free to have in his possession any drug within that maximum. Clause 4(2) of the Bill is intended to achieve the object.

Clause 13.- This clause prohibits a person from wilfully giving false information or refusing to give any information lawfully demanded from him or from altering, destroying etc. any book or other document. Such a provision is necessary for guarding against any evasion of the provisions of the Act.

Clause 19.....

Clause 19.- As suggested by the Drug Controller, Bombay, clause 19 provides for the delegation of powers.

Clause 20.- The provisions of the proposed Bill may be considered to be in conflict with the provisions of the Drugs Act, 1940, e.g. section 18 of that Act. In order to avoid any such conflict it would be desirable to provide that the provisions of the proposed Act would prevail over any other enactment. Clause 20 provides accordingly.

Clause 22.- In view of the provisions included in the Bill, it would be necessary to delete entry "drugs" from Schedule I to the Essential Commodities and Cattle (Control) Act, 1946, and to repeal the Bombay Drugs (Control) Order, 1949, issued thereunder. Clause 22 provides accordingly. A provision is, however, made for pending proceedings.

6. The subject matter of the Bill falls under entries 19, 34, 45, 46 and 47 in List III in the Seventh Schedule to the Constitution. According to the administrative instructions issued by the Government of India, it is necessary to obtain administrative approval of the Government of India before the Bill is introduced in the State Legislature. As clause 4 of the Bill seeks to impose restriction on the freedom of trade in drugs within the State of Bombay, it attracts article 304 of the Constitution and it will be necessary to obtain the previous sanction of the President before the Bill is introduced in the State Legislature. The Bill after it is passed will have to be reserved for the consideration of the President with reference to article 254(2) of the Constitution.

7. After the draft is considered by the Department from the administrative point of view, it will have to be submitted to the Minister (Law) before it is circulated to the Cabinet.

Sd/- .....
Addl. Secy. to Govt. 18/6

SCD.
28.7.56. 4c.

U.R. to L.D. & P.H.D., Through R.D. No. 573-confl, dated the 19th June 1956

Legal Department.

The Revenue Department has not seen the proposals now made by the Local Self Government and Public Health Department in its note at page 147A ante.

2. The following observations are, however, made with reference to the suggestions made by the Drug Controller:-

Paragraph 3 of Drug Controller's note at page 149.- The proposal of the Drug Controller to include 'gift' in the difinition of "sale", is not in order. It will be clear from the provisions of the Bill that there is no absolute prohibition in regard to the sale of a notified drug. Had there been such absolute prohibition on sale, it could have been argued that since the Act applies to sale, a gift of notified drug is parmissible. What the Bill provides in clause 6 is that no person other than a dealer or a producer shall have in his possession at any one time a greater quantity of a notified drug than what is specified by a notification issued under sub-section (2) of section 4. Within the permissible limit of possession there is no objection if a person obtains a notified drug as a gift. It is not, therefore, necessary to define the word "sale" so as to include "gift".

Para.4 of Drug Controller's note.The Drug Controller has endersed the proposal of the Director of Prohibition at page 145. That porposal has not been accepted by the Secretary, Revenue Department (vide his not at page 147).

Para.5 of Drug Controller's note.- Clause 9 of the Bill follows closely the wording of section 9 of the Drugs (Control) Act, 1950, in force in Part 'B' States. Moreover the proposal of the Drug Controller to impose a statutory duty to issue a cash memo even where the amount of the sale does not exceed Rs. 5/- would work hardship on samll traders, especially in the mofussil, who should necessarily have to keep printed cash memos. Besides a cash memo is not obligatory under the Bombay Sales Tax Act in the case of every sale.

Paras. 6:.....

Paras. 6 and 7 Drug Controller's note.- If the Revenue Department has no objection to the imposing of a severe penalty, perhaps the proper course will be to insert penal provisions on the lines of the Bombay Prevention of Adulteration Act. The Revenue Department and the Local Self Government and Public Health Department should decide the point. If the cases are to be tried by Magistrates and that too by summary procedure, it will not be proper to empower Magistrates to inflict punishment of 5 years imprisonment. The suggestion of the Drug Controller to provide for punishment of 5 years is not proper.

Para.8 of the Drug Controller's note.- Under clause 14 of the Bill, an offence under the Act is made punishable with imprisonment which may extend to 3 years. All such offences would therefore be cognizable in virtue of the provisions of section 4(1)(f) of the Code of Criminal Procedure read with the second Schedule thereto (please see the entry under the heading "offences against other laws").

Para.9 of Drug Controller's note.- Secretary, Revenue Department, has already expressed his view that the investigation of the offences under the Act should be left to an Inspector. If the intention is to widen the scope of the clause and to empower the Drug Controller and Drug Inspector appointed under section 21 of the Drugs Act, 1940, the clause will have to be amended on the lines of section 21(1) of the Drugs Act, 1940. The Revenue Department may confirm the proposal in the first instance.

Para. 10 of the Drug Controller's note.- The Drug Controller's proposal goes beyond the scope of the Bill. It is nowhere provided in the Bill that a dealer or a producer shall require a licence for the manufacture for sale, or for the sale or distribution of drugs. In the absence of such an operative provision in the Bill, incidental power providing for the form of the licenses and the conditional licenses would not be in order. It is not the intention of the Bill to require a licence for the possession of drugs by a ~~Producer or dealer~~ or by a private individual ....

individual or for the sale of any drug. Such a licence is under section 18(c) of the Drugs Act, 1940.

Para. 11 of the Drug Controller's note.- The Schedule of the Bombay Drugs Control Order referred to in that para. will have to be issued under section 4 after as a notification under section 3(1) is first issued directing to what drugs the Act shall apply. Before the Schedule is issued under section 4 it will have to be verified that all the drugs specified in the Schedule are included in the notification to be issued under section 3(1) of the Act.

If the Bill is to be introduced during this session immediate steps will have to be taken by the Revenue Department and the Local Self Government and Public Health Department to obtain the administrative approval of the Government of India, then get the draft approved by the Cabinet and them to publish the Bill.

O.c.

Id/- .....

15/7

Additional Secretary to Government.

U.R. TO L.S.G. & P.H.D., No. 158-L, dated the 15th July 1952.

SCD.
28.7.56. 4c.

Legal Department.

Discussed with Minister (Health).

A draft Bill and the Statement of Objects and Reasons to be attached thereto are put up herewith. As the Government of India has stated that before applying the Act to any particular drug, its approval should be obtained, it would not be proper to make mentions of any particular drug such as ACTH and Cartisone in the Statement. It is sufficient to state that the object is to control the possession, sale and use of certain drugs.

As the price control is no longer to be the object of the Act, and the object of the Bill is merely to control the possession, sale and use of drugs, it is for consideration whether it is necessary to modify the provisions regarding sentences.

If the draft Bill and the Statement of Objects and Reasons are approved, Minister (Health) may kindly sign the Statement and the Publication of the Bill may be sanctioned.

O.c.

Id/- .....

12/8

Additional Secretary,
Legal Department.

Minister(Health)

SSD.
28.7.56. 4c.

No. 14879-B
Legal Department.
Bombay Castle(Bombay Hol 1.), 11th September 195

From

Shri J.R. Dhurandhar,
Additional Secretary to the Government of Bombay,
Legal Department.

To The Secretary to the Governor of Bombay.

Subject :- The Bombay Drugs (Control) Bill, 1952.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for being presented to the Governor the authentic copy of the Bombay Drugs (Control) Bill, 1952, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 19th August 1952 and the 22nd August 1952, respectively.

2. The subject-matter of the Bill falls under entries 2, 19, 45 and 46 in List III in the Seventh Schedule to the Constitution of India. As the provisions of the Bill are repugnant to the provisions of the Code of Criminal procedure, 1898 and of the Drugs Act, 1940 which are existing laws relating to entries 2 and 19 in the concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution of India.

3. I also forward herewith six copies of each of the items

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	:	Nos. 1 and
2. Bill as read for the third time and passed by the Bombay Legislative Council.	:	2 and two
3. Extracts from the proceedings of the Bombay Legislative Assembly dated the 19th August 1952 and of the Bombay Legislative Council, dated the 22nd August 1952.	:	copies of

item No.3.....

Item No.3 of the papers noted in the margin. The Bill was not referred to a Select Committee.

Yours faithfully,

Id/- .....

11/9

Additional Secretary to Government.

Copy forwarded with compliments to the Secretary to the Government of Bombay, Local Self Government and Public Health Department.

Submitted for signature.

P.N.H.
11/9.

SSD.
28.7.1956. 4c.

No. G. S. 2978

From

Shri S.B. Kulkarni, I.C.S.,
The Secretary to the Governor of Bombay,

To

The Secretary to the Bombay
Legislature Department, Council Hall, Bombay 1.

Subject :- The Bombay Drugs (Control) Bill, 1952.

S E A L

Government House,
Ganeshkhind, Poona.
September 25 1952.

Sir,

Referring to the Bombay Drugs (Control) Bill, 1952, which was passed by the Bombay Legislative Assembly and the Bombay Legislative Council on August 19 and 22, 1952, respectively, I am directed to state for the information of the Speaker and the Chairman that as the provisions of the Bill are repugnant to the provisions of the Code of Criminal Procedure 1898, and or the Drugs Act, 1940, which are existing laws relating to entries 2 and 9 in the concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the President - vide article 254(2) of the Constitution of India. The Governor has accordingly been pleased under article 200 of the Constitution to declar that he reserves the Bill for the Consideration of the President.

Yours faithfully,

Sd/- S. B. Kulkarni,

Secretary to the Governor.

No. GS-2979

Governor's Secretary's Office,
Raj Bhavan, Ganeshkhind, Poona 7,
September 25, 1952.

Copy forwarded with compliments to the Additional Secretary to Government, Legal Department, Bombay 1, with reference to his letter No.14879-B of September 11, 1952.

Sd/- S. B. Kulkarni
Secretary to the Governor.

No. GS-3365

From

The Secretary to the Governor of Bombay.

To

The Additional Secretary to Government,
Legal Department, Bombay 1.

Subject :- The Bombay Drugs (Control), Bill, 1952.

Raj Bhavan,
Bombay,
October 30 1952.

Sir,

With reference to your letter No. 17374/B dated October 21, 1952, on the above-mentioned subject, I am to say that intimation has been received from the Government of India, Ministry of Home Affairs, that the President assented to the Bombay Drugs (Control) Bill, 1952, on October 27, 1952.

Yours faithfully,

Sd/- .....

For Secretary to the Governor.

SSD.
28.7.56. 4c.

ACTS.

Publication of the

Bombay Drugs (Control) Act, 1952.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 18211/B
Bombay Castle, 3rd November 1952.

Letter to the Secretary to the Governor, No.14879-B, dated the 11th September 1952.

Letter from the Secretary to the Governor, No.G.S. 3355, dated the 30th October 1952.

"With reference to your letter No.17374/B dated October 21, 1952, on the above-mentioned subject I am to say that intimation has been received from the Government of India, Ministry of Home Affairs, that the President assented to the Bombay Drugs (Control) Bill, 1952, on October 27, 1952."

RESOLUTION:- The law should be published as Bombay Act No. XXIX of 1952 in the Bombay Government Gazette dated the 3rd November 1952.

2. The Act should be translated into Marathi, Gujarati Kannada and Hindi (in Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Local self Government and Public Health Department.

By order of the Governor of Bombay,

Sd/- K.J. Pathare,
Assistant Secretary to Government.

To.
The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department and 10 copies to the Local Self Government and Public Health Department.)
etc...

SSD.
28.7.56. 4c.

Ieral Department.

IMMEDIATE.

The Bombay Drugs (Control) Act, 1952 has received the assent of the President on 27th October 1952 and is being published in the Bombay Government Gazette as Bombay Act XXIX of 1952 on 3rd November 1952. The Local Self Government and Public Health Department is requested to take necessary steps to publish the notifications under the Act in the Gazette on the same day, the drafts of which have already been supplied to that Department and which are to be published simultaneously with the publication of the Act in the Gazette.

C.C.

Id/.....

Assistant Secretary to Government.

U.B. to L.S.G. & P. H. D. No. 18203/B, dated the 3rd November 1952.

CSD.
30/7/1956. 4c.

No. GS-3388.

From

The Secretary to the Governor of Bombay.

To

The Additional Secretary to Government,
Legal Department, Bombay 1.

SEAL

Subject :- The Bombay Drugs (control)
Bill, 1952.

RAJ BHAVAN,
Bombay,
November 5 1952.

Sir,

In continuation of this office letter No. GS.3355 dated October 30, 1952, on the above mentioned subject, I am directed to forward herewith the authentic copy of the Bombay Drugs (contr
Bill, 1952, with the President's assent signified

Yours faithfully,

Sd/- .....

For Secretary to the Governor.

SSD.
30.7.56. 4c.

Registered No. B-1

The
Bombay Government Gazette
PUBLISHED BY AUTHORITY

TUESDAY, 12TH AUGUST 1952.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XXXIX OF 1952.

A Bill to provide for the control of the possession, sale and use of drugs.

WHEREAS it is expedient to provide for the control of the possession, sale and use of drugs and for certain other purposes ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Drugs (Control) Act, 1952.

(*2*) It extends to the whole of the State of Bombay.

(*3*) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, specify in this behalf.

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "dealer" means a person carrying on, either personally or through any other person, the business of selling any drugs, whether wholesale or retail ; but does not include a medical practitioner or dispensing chemist ;

(*b*) "dispensing chemist" means a chemist who carries on the business of dispensing medicines ;

(*c*) "drug" means (*i*) a medicine for internal or external use of human beings or animals, or (*ii*) substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals,—to which medicine or substance this Act is declared to be applicable under sub-section (*1*) of section 3 ;

(*d*) "medical practitioner" means a person registered under the Bombay Medical Act, 1912, or registered or entered on the list under the Bombay Medical Practitioners Act, 1938, or a person whose name is entered in Part A or Part B of the register of practitioners maintained under the Bombay Homoeopathic Act, 1951; Bom. VI of 1912. Bom. XXVI of 1938. Bom. XLVIII of 1951.

(*e*) "notified drug" means a drug which has been notified by the State Government to be a notified drug under section 3;

(*f*) "producer" includes a manufacturer.

(*2*) For the purposes of this Act, a person shall be deemed to be in possession of a drug, if he is in actual or constructive possession of the same and shall include a person on whose behalf or on account of whom another person is in custody of the drug.

Drugs to which this Act applies and notified drugs.

3. (*1*) The State Government may, by notification in the *Official Gazette*, declare any drug to be a drug to which this Act applies.

(*2*) If the State Government is satisfied that a drug is used in a manner injurious to health, the State Government may, by notification in the *Official Gazette*, specify it as a notified drug.

Fixing of maximum quantities which may be held or sold.

4. (*1*) The State Government may, by notification in the *Official Gazette*, fix in respect of any drug—

(*a*) the maximum quantity which may at any one time be possessed by a dealer or producer;

(*b*) the maximum quantity which may in any one transaction be sold to any person.

(*2*) The State Government may also by notification in the *Official Gazette* specify the maximum quantity of a notified drug which a person in his individual capacity or as the head of a household may possess at any one time.

Explanation.—For the purpose of this section a "household" shall mean a group of persons normally residing and messing jointly as the members of one domestic unit.

Medical practitioner and dispensing chemist not to supply notified drug for purposes other than medicinal and except under prescription.

5. (*1*) A medical practitioner shall not supply any notified drug in his possession to any person for a purpose other than *bona fide* medicinal purpose and except under a prescription issued by him or another medical practitioner.

(*2*) A dispensing chemist shall not supply any notified drug in his possession to any person for a purpose other than *bona fide* medicinal purpose and except on a prescription issued by a medical practitioner.

(*3*) Any prescription issued for the purposes of sub-section (*1*) or (*2*) or copies thereof and other records shall be maintained in such manner and preserved for such period as may be prescribed.

Limitation on quantity of any notified drug which may be possessed at any one time.

6. No person other than a dealer, a producer, a medical practitioner or a dispensing chemist shall have in his possession at any one time a greater quantity of a notified drug than what is specified by notification issued under sub-section (*2*) of section 4.

Cash memorandum to be given of certain sales.

7. (*1*) Every dealer or producer when selling any drug for cash shall give to the purchaser a cash memorandum containing particulars of the transaction.

(*2*) The State Government may, by notification in the *Official Gazette*, prescribe the particulars to be contained in any such cash memorandum.

Prohibition or regulation of the disposal of drugs.

8. If in the opinion of the State Government it is necessary or expedient so to do, it may, by order in writing—

(*a*) prohibit the disposal of any drug except in such circumstances and under such conditions as may be specified in the order ;

(*b*) direct the sale of any drug to any dealer or class of dealers and in such quantities as may be specified in the order ;

and make such further orders as appear to it to be necessary or expedient in connection with any order issued under this section.

Evasion of provisions.

9. No person shall wilfully give any false information or refuse to give any information lawfully demanded from him under this Act or the rules thereunder or alter by cancellation or otherwise, destroy, mutilate or deface any book or other document.

Penalty.

10. (*1*) Whoever contravenes any of the provisions of this Act or fails to comply with any directions made under authority conferred by this Act, shall, on conviction, be punished—

(*i*) for a first offence, with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such fine shall not be less than five hundred rupees ;

(*ii*) for a second offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than six months and fine shall not be less than one thousand rupees ;

(*iii*) for a third and subsequent offences, with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and fine shall not be less than two thousand and five hundred rupees.

(*2*) A Court convicting any person of an offence punishable under this Act may order that the whole or any part of the stock of drugs in respect of which the offence was committed shall be forfeited to Government.

Magistrate's power to impose higher punishment.

V of 1898.

11. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Presidency Magistrate or for a Magistrate of the First Class specially empowered by the State Government in this behalf to pass any sentence authorised under section 10, in excess of his powers under section 32 of the said Code.

Offences by corporations.

12. Where a person committing an offence punishable under this Act is company or an association or a body of persons, whether incorporated or not, every director, manager, secretary, agent or other officer or person actively associated with the management thereof, shall, unless he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Procedure.

13. (*1*) The State Government may, by notification in the *Official Gazette*, appoint such persons or officers as it thinks fit, to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(*2*) No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Commissioner of Police in Greater Bombay and elsewhere of the District Magistrate.

Powers to search and seizure.

14. Any person competent to investigate any offence under this Act may search any place in which he has reason to believe that an offence under this Act has been, or is being committed, and take possession of any stock of drugs in respect of which the offence has been or is being committed and the provisions of the Code of Criminal Procedure, 1898, shall so far as may be applicable, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 98 of that code. V of 1898.

Protection of action taken in good faith.

15. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

Delegation.

16. The State Government may, by notification in the *Official Gazette*, direct that any power exercisable by it under this Act, shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by an officer specially empowered in this behalf by the State Government.

Saving of other laws.

17. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force relating to any of the matters dealt with in this Act.

Power to make rules.

18. (*1*) The State Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the maintenance and preservation by dealers and producers generally or by any dealer or producer in particular, of records and accounts of all sale and purchase transactions made by them or the stocks of drugs in their possession and used ;

(*b*) the maintenance and preservation of prescriptions and other records by medical practitioners and dispensing chemists ;

(*c*) the furnishing of any such information as may be required with respect to the business or profession carried on by any dealers, producers, medical practitioners or dispensing chemists ;

(*d*) the inspection of any books of account or other documents belonging to or under the control of any dealers, producers, medical practitioners or dispensing chemists ;

(*e*) any other matter which is to be or may be prescribed under this Act.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to enable Government to control the possession, sale and use of certain highly toxic drugs.

Since the coming into force of the Bombay Prohibition Act, 1949, it has come to the notice of Government that certain drugs are being misused in a manner which is injurious to health. This Bill is intended to prevent this.

The following notes explain some of the important clauses of the Bill :—

Clause 2.—This is a definition clause.

Clause 3.—In this clause, it is proposed to notify drugs to which the Act applies and which are used in a manner injurious to health.

Clause 4.—This clause provides for the fixing of maximum quantities of certain drugs which may be held or sold at any time.

Clause 5.—In this clause, it is proposed that medical practitioners and dispensing chemists should supply notified drugs only for medicinal purposes and under prescription.

Clause 6.—This clause provides for limitation of quantity of any notified drug which should be possessed at any one time.

Clause 9.—This clause prohibits a person from wilfully giving false information or refusing, to give any information lawfully demanded from him or from altering, destroying, etc., any book or other document.

Clause 10.—This clause provides for penalty for the first and subsequent offences for contravening the provisions of the Act.

Clause 11.—This clause provides for the delegation of powers to Magistrates to impose higher punishment for offences specified in the section.

Clause 14.—This clause empowers the officer to search any place in which he has reason to believe that an offence under the Act has been or is being committed and take possession of any stock of drugs, liable to be confiscated.

Clause 18.—This clause provides for the delegation of powers to State Government to make rules to carry out the purpose of the Act.

Dated the 12th August 1952. (Signed) SHANTILAL H. SHAH.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

Poona, dated the 12th August 1952.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XXXIX OF 1952.

A Bill to provide for the control of the possession, sale and use of certain drugs.

(As read for the third time and passed by the Legislative Assembly on the 19th August 1952.)

WHEREAS it is expedient to provide for the control of the possession, sale and use of certain drugs and for certain other purposes ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Drugs (Control) Act, 1952.

(*2*) It extends to the whole of the State of Bombay.

(*3*) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, specify in this behalf.

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) " dealer " means a person carrying on, either personally or through any other person, the business of selling any drugs, whether wholesale or retail ; but does not include a medical practitioner or dispensing chemist ;

(*b*) " dispensing chemist " means a chemist who carries on the business of dispensing medicines ;

(*c*) " drug " means (*i*) a medicine for internal or external use of human beings or animals, or (*ii*) substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals,— to which medicine or substance this Act is declared to be applicable under sub-section (*1*) of section 3 ;

(*d*) "medical practitioner" means a person registered under the Bombay Medical Act, 1912, or registered or entered on the list under the Bombay Medical Practitioners Act, 1938, or a person whose name is entered in Part A or Part B of the register of practitioners maintained under the Bombay Homoeopathic Act, 1951 ; Bom. VI of 1912. Bom. XXV of 1938. Bom. XLVIII of 1951.

(*e*) "notified drug" means a drug which has been notified by the State Government to be a notified drug under section 3 ;

(*f*) "producer" includes a manufacturer.

(*2*) For the purposes of this Act, a person shall be deemed to be in possession of a drug, if he is in actual or constructive possession of the same and shall include a person on whose behalf or on account of whom another person is in custody of the drug.

Drugs to which this Act applies and notified drugs.

3. (*1*) The State Government may, by notification in the *Official Gazette*, declare any drug to be a drug to which this Act applies.

(*2*) If the State Government is satisfied that a drug is used in a manner injurious to health, the State Government may, by notification in the *Official Gazette*, specify it as a notified drug.

Fixing of maximum quantities which may be held or sold.

4. (*1*) The State Government may, by notification in the *Official Gazette*, fix in respect of any notified drug—

(*a*) the maximum quantity which may at any one time be possessed by a dealer or producer ;

(*b*) the maximum quantity which may in any one transaction be sold to any person.

(*2*) The State Government may also by notification in the *Official Gazette* specify the maximum quantity of a notified drug which a person in his individual capacity or as the head of a household may possess at any one time.

Explanation.—For the purpose of this section a "household" shall mean a group of persons normally residing and messing jointly as the members of one domestic unit.

Medical practitioner and dispensing chemist not to supply notified drug for purposes other than medicinal and except under prescription.

5. (*1*) A medical practitioner shall not supply any notified drug in his possession to any person for a purpose other than *bona fide* medicinal purpose and except under a prescription issued by him or another medical practitioner.

(*2*) A dispensing chemist shall not supply any notified drug in his possession to any person for a purpose other than *bona fide* medicinal purpose and except on a prescription issued by a medical practitioner.

(*3*) Any prescription issued for the purposes of sub-section (*1*) or (*2*) or copies thereof and other records shall be maintained in such manner and preserved for such period as may be prescribed.

Limitation on quantity of any notified drug which may be possessed at any one time.

6. No person other than a dealer, a producer, a medical practitioner or a dispensing chemist shall have in his possession at any one time a greater quantity of a notified drug than what is specified by notification issued under sub-section (*2*) of section 4.

Cash memorandum to be given of certain sales.

7. (*1*) Every dealer or producer when selling any notified drug for cash shall give to the purchaser a cash memorandum containing particulars of the transaction.

(*2*) The State Government may, by notification in the *Official Gazette*, prescribe the particulars to be contained in any such cash memorandum.

Prohibition or regulation of the disposal of drugs.

8. If in the opinion of the State Government it is necessary or expedient so to do, it may, by order in writing—

(*a*) prohibit the disposal of any notified drug except in such circumstances and under such conditions as may be specified in the order ;

(*b*) direct the sale of any notified drug to any dealer or class of dealers and in such quantities as may be specified in the order ;

and make such further orders as appear to it to be necessary or expedient in connection with any order issued under this section.

Evasion of provisions.

9. No person shall wilfully give any false information or refuse to give any information lawfully demanded from him under this Act or the rules thereunder or alter by cancellation or otherwise, destroy, mutilate or deface any book or other document.

Penalty.

10. (*1*) Whoever contravenes any of the provisions of this Act or of any rule, order or notification made or issued thereunder or fails to comply with any directions made under authority conferred by this Act, shall, on conviction, be punished—

(*i*) for a first offence, with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such fine shall not be less than five hundred rupees ;

(*ii*) for a second offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than six months and fine shall not be less than one thousand rupees ;

(*iii*) for a third and subsequent offences, with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and fine shall not be less than two thousand and five hundred rupees.

(*2*) A Court convicting any person of an offence punishable under this Act may order that the whole or any part of the stock of notified drugs in respect of which the offence was committed shall be forfeited to Government.

Magistrate's power to impose higher punishment.

11. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Presidency Magistrate or for a Magistrate of the First Class specially empowered by the State Government in this behalf to pass any sentence authorised under section 10, in excess of his powers under section 32 of the said Code.

V of 1898.

Offences by corporations.

12. Where a person accused of an offence punishable under this Act is a company or an association or a body of persons, whether incorporated or not, every director, manager, secretary, agent or other officer or person actively associated with the management thereof, shall, unless he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Inspectors and procedure.

13. (*1*) The State Government may, by notification in the *Official Gazette*, appoint such persons or officers as it thinks fit, to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(*2*) No person or officer below the rank of an Inspector appointed under sub-section (*1*) shall investigate any offence under this Act.

(*3*) No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Commissioner of Police in Greater Bombay and elsewhere of the District Magistrate.

Powers to search and seizure.

14. Any person competent to investigate any offence under this Act may search any place in which he has reason to believe that an offence under this Act has been, or is being committed, and take possession of any stock of notified drugs in respect of which the offence has been or is being committed and the provisions of the Code of Criminal Procedure, 1898, shall so far as may be applicable, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 98 of that Code. 5 V of 1898.

Protection of action taken in good faith.

15. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

Delegation.

16. The State Government may, by notification in the *Official Gazette*, direct that any power exercisable by it under this Act, shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by an officer specially empowered in this behalf by the State Government.

Saving of other laws.

17. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force relating to any of the matters dealt with in this Act.

Power to make rules.

18. (*1*) The State Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the maintenance and preservation by dealers and producers generally or by any dealer or producer in particular, of records and accounts of all sale and purchase transactions made by them or the stocks of notified drugs in their possession and used ;

(*b*) the maintenance and preservation of prescriptions and other records by medical practitioners and dispensing chemists ;

(*c*) the furnishing of any such information as may be required with respect to the business or profession carried on by any dealers, producers, medical practitioners or dispensing chemists ;

(*d*) the inspection of any books of account or other documents belonging to or under the control of any dealers, producers, medical practitioners or dispensing chemists relating to notified drugs ;

(*e*) any other matter which is to be or may be prescribed under this Act.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to enable Government to control the possession, sale and use of certain highly toxic drugs.

Since the coming into force of the Bombay Prohibition Act, 1949, it has come to the notice of Government that certain drugs are being misused in a manner which is injurious to health. This Bill is intended to prevent this.

The following notes explain some of the important clauses of the Bill :—

Clause 2.—This is a definition clause.

Clause 3.—In this clause, it is proposed to notify drugs to which the Act applies and which are used in a manner injurious to health.

Clause 4.—This clause provides for the fixing of maximum quantities of certain drugs which may be held or sold at any time.

Clause 5.—In this clause, it is proposed that medical practitioners and dispensing chemists should supply notified drugs only for medicinal purposes and under prescription.

Clause 6.—This clause provides for limitation of quantity of any notified drug which should be possessed at any one time.

Clause 9.—This clause prohibits a person from wilfully giving false information or refusing to give any information lawfully demanded from him or from altering, destroying, etc., any book or other document.

Clause 10.—This clause provides for penalty for the first and subsequent offences for contravening the provisions of the Act.

Clause 11.—This clause provides for the delegation of powers to Magistrates to impose higher punishment for offences specified in the section.

Clause 14.—This clause empowers the officer to search any place in which he has reason to believe that an offence under the Act has been or is being committed and take possession of any stock of drugs, liable to be confiscated.

Clause 18.—This clause provides for the delegation of powers to State Government to make rules to carry out the purpose of the Act.

Dated the 12th August 1952.

SHANTILAL H. SHAH.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXXIX OF 1952.]

(As read for the third time and passed by the Legislative Assembly on the 19th August 1952.)

A Bill to provide for the control of the possession, sale and use of certain drugs.

[Shri SHANTILAL H. SHAH, M.L.A.]

BOMBAY PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Bom. Act No XXIX of 1952

~~L. A. BILL No. XXXIX OF 1952.~~

An Act

~~*A Bill* to~~ *provide for the control of the possession, sale and use of certain drugs.*

(As read for the third time and passed by the Legislative Assembly on the 19th August 1952.)

(As read for the third time and passed by the Legislative Council on the 22nd August 1952.)

WHEREAS it is expedient to provide for the control of the possession, sale and use of certain drugs and for certain other purposes ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Drugs (Control) Act, 1952.

(*2*) It extends to the whole of the State of Bombay.

(*3*) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, specify in this behalf.

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) " dealer " means a person carrying on, either personally or through any other person, the business of selling any drugs, whether wholesale or retail ; but does not include a medical practitioner or dispensing chemist ;

(*b*) " dispensing chemist " means a chemist who carries on the business of dispensing medicines ;

(*c*) " drug " means (*i*) a medicine for internal or external use of human beings or animals, or (*ii*) substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals,— to which medicine or substance this Act is declared to be applicable under sub-section (*1*) of section 3 ;

(*d*) "medical practitioner" means a person registered under the Bombay Medical Act, 1912, or registered or entered on the list under the Bombay Medical Practitioners Act, 1938, or a person whose name is entered in Part A or Part B of the register of practitioners maintained under the Bombay Homoeopathic Act, 1951 ; Bom. VI of 1912. Bom. XXVI of 1938. Bom. XLVIII of 1951.

(*e*) "notified drug" means a drug which has been notified by the State Government to be a notified drug under section 3 ;

(*f*) "producer" includes a manufacturer.

(*2*) For the purposes of this Act, a person shall be deemed to be in possession of a drug, if he is in actual or constructive possession of the same and shall include a person on whose behalf or on account of whom another person is in custody of the drug.

Drugs to which this Act applies and notified drugs.

3. (*1*) The State Government may, by notification in the *Official Gazette*, declare any drug to be a drug to which this Act applies.

(*2*) If the State Government is satisfied that a drug is used in a manner injurious to health, the State Government may, by notification in the *Official Gazette*, specify it as a notified drug.

Fixing of maximum quantities which may be held or sold.

4. (*1*) The State Government may, by notification in the *Official Gazette*, fix in respect of any notified drug—

(*a*) the maximum quantity which may at any one time be possessed by a dealer or producer ;

(*b*) the maximum quantity which may in any one transaction be sold to any person.

(*2*) The State Government may also by notification in the *Official Gazette* specify the maximum quantity of a notified drug which a person in his individual capacity or as the head of a household may possess at any one time.

Explanation.—For the purpose of this section a "household" shall mean a group of persons normally residing and messing jointly as the members of one domestic unit.

Medical practitioner and dispensing chemist not to supply notified drug for purposes other than medicinal and except under prescription.

5. (*1*) A medical practitioner shall not supply any notified drug in his possession to any person for a purpose other than *bona fide* medicinal purpose and except under a prescription issued by him or another medical practitioner.

(*2*) A dispensing chemist shall not supply any notified drug in his possession to any person for a purpose other than *bona fide* medicinal purpose and except on a prescription issued by a medical practitioner.

(*3*) Any prescription issued for the purposes of sub-section (*1*) or (*2*) or copies thereof and other records shall be maintained in such manner and preserved for such period as may be prescribed.

Limitation on quantity of any notified drug which may be possessed at any one time.

6. No person other than a dealer, a producer, a medical practitioner or a dispensing chemist shall have in his possession at any one time a greater quantity of a notified drug than what is specified by notification issued under sub-section (*2*) of section 4.

7. (*1*) Every dealer or producer when selling any notified drug for cash shall give to the purchaser a cash memorandum containing particulars of the transaction. Cash memorandum to be given of certain sales.

(*2*) The State Government may, by notification in the *Official Gazette*, prescribe the particulars to be contained in any such cash memorandum.

8. If in the opinion of the State Government it is necessary or expedient so to do, it may, by order in writing— Prohibition or regulation of the disposal of drugs.

(*a*) prohibit the disposal of any notified drug except in such circumstances and under such conditions as may be specified in the order ;

(*b*) direct the sale of any notified drug to any dealer or class of dealers and in such quantities as may be specified in the order ;

and make such further orders as appear to it to be necessary or expedient in connection with any order issued under this section.

9. No person shall wilfully give any false information or refuse to give any information lawfully demanded from him under this Act or the rules thereunder or alter by cancellation or otherwise, destroy, mutilate or deface any book or other document. Evasion of provisions.

10. (*1*) Whoever contravenes any of the provisions of this Act or of any rule, order or notification made or issued thereunder or fails to comply with any directions made under authority conferred by this Act, shall, on conviction, be punished— Penalty.

(*i*) for a first offence, with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such fine shall not be less than five hundred rupees ;

(*ii*) for a second offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than six months and fine shall not be less than one thousand rupees ;

(*iii*) for a third and subsequent offences, with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and fine shall not be less than two thousand and five hundred rupees.

(*2*) A Court convicting any person of an offence punishable under this Act may order that the whole or any part of the stock of notified drugs in respect of which the offence was committed shall be forfeited to Government.

11. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Presidency Magistrate or for a Magistrate of the First Class specially empowered by the State Government in this behalf to pass any sentence authorised under section 10, in excess of his powers under section 32 of the said Code. Magistrate's power to impose higher punishment.

V of 1898.

Offences by corporations.

12. Where a person accused of an offence punishable under this Act is a company or an association or a body of persons, whether incorporated or not, every director, manager, secretary, agent or other officer or person actively associated with the management thereof, shall, unless he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Inspectors and procedure.

13. (*1*) The State Government may, by notification in the *Official Gazette*, appoint such persons or officers as it thinks fit, to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(*2*) No person or officer below the rank of an Inspector appointed under sub-section (*1*) shall investigate any offence under this Act.

(*3*) No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Commissioner of Police in Greater Bombay and elsewhere of the District Magistrate.

Powers to search and seizure.

14. Any person competent to investigate any offence under this Act may search any place in which he has reason to believe that an offence under this Act has been, or is being committed, and take possession of any stock of notified drugs in respect of which the offence has been or is being committed and the provisions of the Code of Criminal Procedure, 1898, shall so far as may be applicable, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 98 of that Code. V of 1898.

Protection of action taken in good faith.

15. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

Delegation.

16. The State Government may, by notification in the *Official Gazette*, direct that any power exercisable by it under this Act, shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by an officer specially empowered in this behalf by the State Government.

Saving of other laws.

17. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force relating to any of the matters dealt with in this Act.

Power to make rules.

18. (*1*) The State Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the maintenance and preservation by dealers and producers generally or by any dealer or producer in particular, of records and accounts of all sale and purchase transactions made by them or the stocks of notified drugs in their possession and used ;

(*b*) the maintenance and preservation of prescriptions and other records by medical practitioners and dispensing chemists ;

(*c*) the furnishing of any such information as may be required with respect to the business or profession carried on by any dealers, producers, medical practitioners or dispensing chemists ;

(*d*) the inspection of any books of account or other documents belonging to or under the control of any dealers, producers, medical practitioners or dispensing chemists relating to notified drugs ;

(*e*) any other matter which is to be or may be prescribed under this Act.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXXIX OF 1952.]

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